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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,096	08/20/2001	Donald L. Schmidt	00-034	5482

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EXAMINER

VARNER, STEVE M

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 11/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/932,096

Applicant(s)

SCHMIDT, DONALD L.

Examiner

Steve M Varner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17-20 are preambled as a "tie bracket", but they depend from claims that are preambled as a "form". Preambles need to be consistent in depending claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-6, 8, 12-17, 19, are rejected under 35 U.S.C. 102(e) as being anticipated by Severino.

Regarding claim 1, Vaughan et al. shows a first elongate plate (250), a second elongate plate (450) spaced apart from the first elongate plate, and a web (between 250 and 450) securing the first plate (250) and the second plate (450) in spaced apart

relation. Vaughan et al. shows the web forms a plurality of circumferentially closed openings (230, 220, 210, 350, 320, 310, 430, 410) arranged in at least two horizontal rows. Vaughan et al. teaches each horizontal row includes at least two adjacent openings. (Fig. 3, 4)

Regarding claims 2, 13, Vaughan et al. shows one of the horizontal rows of openings includes at least two openings (230, 330) oriented such that the length of each one of the two openings extends horizontally. (Fig. 3)

Regarding claims 3, 14, Vaughan et al. shows a horizontal row of openings including at least three openings including a first outer opening (230), a second outer opening (430), and a central opening (330), oriented such that their lengths are horizontal. (Fig. 3)

Regarding claims 4, 15, Vaughan et al. teaches a plurality of vertically spaced apart spanning members (620, 630, 650, 660) extending from the first plate (250) to the second plate (450) including an uppermost spanning member (660) and a lowermost spanning member (620), wherein each of the spanning members comprises intersecting straps selectively orthogonally oriented relative to one another.

Regarding claims 5, 16, Vaughan et al. shows the web including at least one brace connecting at least two of the spanning members (600, 700), wherein the brace comprises intersecting straps selectively orthogonally oriented relative to one another.

Regarding claims 6, 17, Vaughan et al. shows an upwardly open receptacle (950) having width and a height greater than the width. (Fig. 4)

Art Unit: 3635

Regarding claim 8, Vaughan et al. reveals the first outer opening (230) and the second outer opening (430) are bounded by a strap (260, 460) oriented with its width parallel to at least one of the first plate (230) and the second plate (450). (Fig. 3, 4)

Regarding claim 12, Vaughan et al. teaches a first insulating panel (12) formed from expanded foam (Col. 4, Line 30-40), a second opposed insulating panel (14) formed from expanded foam (Col. 4, Line 30-40), and a tie bracket (600) spanning and connecting the first insulating panel (12) and the second insulating panel (14) with a web (between 250, 450) having a first end (200) embedded within the first insulation panel (12) and a second end (400) embedded within the second insulating panel (14). Vaughan et al. teaches the web with a plurality of circumferentially closed openings arranged in two horizontal rows each with at least two adjacent openings. (Fig. 2, 3, 4)

Regarding claim 19, Vaughan et al. shows the first and second insulating panel with a plurality of projections (34) formed in the upper surface and a plurality of notches (36) formed in the lower surface. (Fig. 7)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan et al. in view of Severino.

Regarding claim 7, Vaughan et al. teaches the basic claimed structure. Vaughan et al. does not teach the first outer opening and the second outer opening each having a height greater than that of the central opening. (Fig. 5) Vaughan et al. does teach the first outer opening (230) and the second outer opening (430) each having a height greater than that of the central opening. (Fig. 5) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use the higher first and second openings of Severino in the structure of Vaughan et al. to let more of the insulating foam through the openings on the sides.

Claims 9, 10, are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan et al. in view of Cymbala et al.

Regarding claims 9, 10, Vaughan et al. shows the basic claimed structure. Vaughan et al. does not show one circumferentially closed opening located above the uppermost spanning member and the lowermost spanning member with at least one circumferentially closed opening formed therein. Cymbala et al. shows one circumferentially closed opening located above the uppermost spanning member and the lowermost spanning member with at least one circumferentially closed opening formed therein. (Fig. 3) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have openings above and below the uppermost and lowermost spanning members to increase the web strength.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan et al. in view of Sparkman.

Art Unit: 3635

Regarding claim 18, Vaughan et al. shows the basic claimed structure. Vaughan et al. does not show the plate having a height equal to that of the first insulating panel and the second insulating panel. Sparkman shows the plate having a height equal to that of the first insulating panel and the second insulating panel. (Fig. 11) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a plate as in Sparkman in the structure of Vaughan et al. This would give support the entire height of the insulating panel.

Claim Objections

Claim 20 is allowable for the first end notch spaced apart from the first end by a distance interval of half the magnitude of the magnitude of the distance interval between adjacent notches.

Allowed Claims

Claim 11 is allowed for the circumferentially closed opening located above the uppermost spanning member.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Young shows an insulating non-removable type concrete wall forming structure and device and system for attaching wall coverings thereto. Mensen shows a web member for concrete form walls. Cymbala et al. reveals an insulating concrete form system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV
November 1, 2002



Carl D. Friedman
Supervisory Patent Examiner
Group 3600